

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN HUGHES,

No. C 09-4511 SI

Plaintiff,

**ORDER DISMISSING TILA CLAIM
WITHOUT LEAVE TO AMEND;
REMANDING STATE CLAIMS TO
SUPERIOR COURT FOR THE COUNTY
OF NAPA**

v.

RESIDENTIAL MORTGAGE CAPITAL, *et al.*,

Defendants.

Defendant RMC's motion to dismiss the second amended complaint is scheduled for a hearing on March 26, 2010. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court DISMISSES plaintiff's amended claim under the Truth In Lending Act without leave to amend, declines supplemental jurisdiction over the fourteen state law claims, and REMANDS the case to the Superior Court of the State of California, County of Napa.

BACKGROUND

On August 13, 2009, plaintiff Kevin Hughes filed a first amended complaint in the Superior Court of the State of California, County of Napa.¹ The complaint named Residential Mortgage Capital, Indymac Federal Bank, Quality Loan Service Corporation, and Does 1-100 as defendants, and alleged twenty-one causes of action, including claims under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, the Real Estate and Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.*, and

¹ The Notice of Removal does not state the date when the original complaint was filed.

1 the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.* On
2 September 24, 2009, defendant Residential Mortgage Capital (“RMC”) removed the case to this Court
3 on the basis of federal question jurisdiction. On October 22, 2009, RMC filed a notice stating that
4 defendant Quality Loan Service Corporation (“Quality”) consented to the removal.

5 In an order filed December 29, 2009, the Court granted RMC’s motion to dismiss the first
6 amended complaint. With respect to plaintiff’s TILA claim, which sought damages against RMC, the
7 Court held that the claim appeared to be untimely, that plaintiff had not pled a basis for equitable tolling,
8 and that there were numerous substantive problems with the claim. The Court also dismissed the
9 RESPA and RICO claims for failure to state a claim, and did not address the state law claims because
10 it was unclear whether plaintiff could state a federal claim. The Court granted plaintiff leave to amend
11 all claims.

12 On January 19, 2010, plaintiff filed a second amended complaint. The only federal claim alleged
13 in the second amended complaint is a claim for rescission under TILA against “Doe noteholders.”
14 SAC ¶¶ 123-28. All of the remaining state law claims are alleged against the various named defendants.
15 The second amended complaint also alleges that a foreclosure sale took place on January 15, 2010. *Id.*
16 ¶ 4. RMC has moved to dismiss the second amended complaint. It is unclear from the docket whether
17 the other defendants have been served with the second amended complaint.

18 19 DISCUSSION

20 The Court *sua sponte* analyzes whether plaintiff has stated a claim under TILA because this
21 claim is the only basis for federal jurisdiction, and no defendant can move to dismiss this claim as it is
22 alleged only against Doe defendants.

23 Plaintiff alleges that when he refinanced his home he was not provided with the disclosures and
24 notice of rescission mandated by TILA, and he seeks the remedy of rescission. However, plaintiff’s
25 right to rescind under TILA terminated upon the January 15, 2010 foreclosure sale of plaintiff’s
26 property. TILA implementing Regulation Z provides that “the right to rescind shall expire 3 years after
27 consummation, upon transfer of all of the consumer’s interest in the property, or upon sale of the
28 property, whichever occurs first.” 12 C.F.R. § 226.23; *see Meyer v. Ameriquest Mortgage Co.*, 342 F.3d

899, 902 (9th Cir. 2003) (holding “[o]nce the Meyers sold their home, took control of the loan proceeds and paid off the loan, the TILA rescission provision no longer applied and only damages provision remained as a cause of action”); *see also id.* at 903 (stating “[t]he regulation is clear: the right to rescind ends with the sale”).

Numerous courts have held that an involuntary foreclosure sale, like any other sale, terminates TILA’s right of rescission. *See, e.g., Hallas v. Ameriquest Mortg. Co.*, 406 F. Supp. 2d 1176, 1183 (D. Or. 2005); *Worthy v. World Wide Fin. Servs., Inc.*, 347 F. Supp. 2d 502, 506 (E.D. Mich. 2004) (“A sale or transfer of the property need not be voluntary to terminate the right to rescind. For example, a foreclosure sale would terminate an unexpired right to rescind.”) (quoting 12 C.F.R. § 226.23(a)(3)); *Ford v. Wells Fargo Home Mortg.*, No. 08-4276 SC, 2008 WL 5070687, at *3 (N.D. Cal. Dec. 1, 2008) (dismissing claim and noting, *inter alia*, that “the Official Staff Commentary to Regulation Z, which was promulgated by the Board of Governors of the Federal Reserve System to implement TILA, also states that a ‘sale or transfer of the property need not be voluntary to terminate the right to rescind the transaction’ Official Staff Commentary to Reg. Z, 12 C.F.R. § 226.23(a)(3)”; *Metcalf v. Drexel Lending Group*, No. 08-CV-0731, 2008 WL 2682851, at *2 (S.D. Cal. July 3, 2008).

Accordingly, the Court DISMISSES the TILA rescission claim without leave to amend. Plaintiff has now had several opportunities to amend the TILA claim, and the Court concludes that any further leave to amend is futile. With the dismissal of the TILA claim, there is no longer any basis for federal jurisdiction. The Court declines to exercise supplemental jurisdiction over the remaining state law claims, and REMANDS these claims to state court. *See* 28 U.S.C. § 1367(c)(3).

CONCLUSION

For the foregoing reasons, the Court DISMISSES the TILA claim without leave to amend and REMANDS the state law claims to Superior Court for the County of Napa. All pending motions are DENIED as moot.

IT IS SO ORDERED.

Dated: March 17, 2010


SUSAN ILLSTON
United States District Judge